U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

C-1

[redacted]

FILE: WAC 01 218 53653 Office: CALIFORNIA SERVICE CENTER Date: JUL 13 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the AAO's previous decision will be affirmed and the petition will be denied.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition. The AAO affirmed the director's decision and dismissed the appeal, adding the finding that the petitioner did not appear to be carrying on the vocation of a minister.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
> >
> > (II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
> >
> > (III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The AAO found that, because the beneficiary worked in secular employment while performing unpaid volunteer services as the petitioner's pastor, the beneficiary had not accumulated the required two years of continuous experience immediately prior to the filing date. The AAO further found that, owing to this secular employment, the beneficiary was essentially a lay preacher rather than a minister.

On motion, counsel argues that the beneficiary is not a lay preacher, but rather a full-fledged minister, ordained and authorized to act as pastor of the petitioning church.[1] We concur with the assertion that the

[1] Elsewhere on motion, counsel asserts that the beneficiary is "an ordained Pastor . . . an individual engaged in a 'religious occupation.'" The regulatory definitions of "minister" and "religious occupation" are, however, mutually exclusive. The statute deems the work of a minister to be a vocation rather than an occupation. Having argued emphatically that the beneficiary is not a lay preacher, counsel cannot offer the contradictory assertion that the beneficiary works in a religious occupation.

nature of the beneficiary's work does not make him a lay preacher instead of a minister. This distinction, however, brings with it critical considerations with regard to source of income.

Counsel states that the beneficiary "performed his duties as a Pastor for the [petitioning church], but because of economic necessity, performed side jobs in landscaping. However, he did not cease at any point to perform his duties as pastor." Counsel thus acknowledges, rather than contests, the beneficiary's secular employment outside of the church.

The regulations at 8 C.F.R. § 204.5(m)(1) and (4) require that the alien must be *solely* carrying on the vocation of a minister. This language echoes section 101(a)(27)(C)(ii)(I) of the Act, 8 U.S.C. § 101(a)(27)(C)(ii)(I), which requires that the alien seeks to enter the United States solely for the purpose of carrying on the vocation of a minister. The statute and regulations also require *continuous* experience during the two-year qualifying period. An alien who works in a secular occupation is not *continuously* carrying on the vocation of a minister. *Matter of B*, 3 I&N Dec. 162 (CO 1948). The beneficiary's secular landscaping work during the two-year period is, therefore, inherently disqualifying.

Counsel states that the AAO "failed to take into consideration the many years that [the beneficiary] spent as a religious minister and Pastor in his native Guatemala." The plain wording of the statute and regulations indicates that we must consider the two years immediately preceding the filing of the petition. We have no discretion to consider earlier experience in lieu of the two-year period mandated by Congress. Failure to disregard the statute is not adjudicative error, nor is it otherwise valid grounds for reversal on motion.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the AAO will be affirmed, and the petition will be denied.

**ORDER:** The AAO's decision of June 12, 2003 is affirmed. The petition is denied.